

JOHN COLWELL  
 Name 33742

Northern Nevada Correctional Center  
P.O. Box 7000, CARSON CITY, NEVADA 89702  
 Prison Number

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DISTRICT OF NEVADA	
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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

John Colwell, )  
 Plaintiff, )  
 )  
 vs. )  
Robert Bannister, )  
Medical Director NDoc, )  
Howard Skolnik, Director, )  
Nevada Department of, )  
Corrections, 5 JOHN DOES, )  
Et. Al., 5 JANE DOES, )  
 Defendant(s). )

3:10-cv-00669  
 CASE NO. \_\_\_\_\_  
 (To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT  
 PURSUANT TO  
 42 U.S.C. § 1983  
 JURY TRIAL DEMANDED

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, John Colwell,  
 (Print Plaintiff's name)

who presently resides at Northern Nevada Correctional Center, were

violated by the actions of the below named individuals which were directed against  
 Plaintiff at Said N.N.C.C., NSP on the following dates  
 (institution/city where violation occurred)

\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.  
 (Count I) (Count II) (Count III)

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

2) Defendant Robert Bannister resides at Northern Nevada Correctional Center  
 (full name of first defendant) (address if first defendant)  
 and is employed as MEDICAL DIRECTOR. This defendant is sued in his/her  
 (defendant's position and title, if any)  
 individual  official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Defendant Bannister was acting under Color of law when he denied Plaintiff A serious AND LIFE THREATENING MEDICAL PROCEDURE

NDOC CENTRAL OFFICE

3) Defendant HOWARD SKOLNIK resides at P.O. Box 711 CARSON CITY 89702  
 (full name of first defendant) (address if first defendant)  
 and is employed as DIRECTOR, NDOC. This defendant is sued in his/her  
 (defendant's position and title, if any)  
 individual  official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Defendant Skolnik is responsible at all times for the actions of Defendant Bannister

4) Defendant To be named at resides at a later date,  
 (full name of first defendant) (address if first defendant)  
 and is employed as . This defendant is sued in his/her  
 (defendant's position and title, if any)  
 individual  official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: \_\_\_\_\_

5) Defendant To be named resides at at a later date,  
 (full name of first defendant) (address if first defendant)  
 and is employed as . This defendant is sued in his/her  
 (defendant's position and title, if any)  
 individual  official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: \_\_\_\_\_

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

28 USC § 1915(e), (1), 28 USC § 3626(A)  
and F.A.C.P. 65(A)

## B. NATURE OF THE CASE

- 1) Briefly state the background of your case.

Plaintiff is a 63 year old prisoner, who due to his cataract has total blindness in right eye. This was originally diagnosed in 2003. On or about 09/12/09 Plaintiff requested eye exam and cataract consult. 10/06/09 Plaintiff examined by Dr. Fischer, at Louderback Correctional Center. Dr Fischer stated that there was no damage to R eye and he was recommending cataract consult. 02/17/10 Plaintiff was informed that Dr. Scott had discontinued cataract consult and on 09/13/09, 02/18/10 Plaintiff was told by Dr Goddard, "you don't fit the criteria" and there is a "one eye only policy with NDOC. The grievance process

(continued on pg 3A)

### C. CAUSE OF ACTION

1.) continued from page 3

was started on 02/22/10. Informal Grievance response was cataract surgery is "cosmetic/elective" surgery is "non-essential" despite recommendation from Dr. Fischer. "It is not considered for repair" by Utilization Review.

First level grievance filed 03/20/10. The response was "surgery at present non-essential"

Second level grievance filed 04/20/10. The response on 06/15/10 "cataract surgery is not an emergency" You should be evaluated periodically the degree of impairment"

Plaintiff by Administrative Regulation allowed only one hour per calendar year to review medical records.

On 05/11/10 a response by John Keist CN111 stated that medical records are missing.

October 2001. During yearly physical with Dr. Synder, Plaintiff complained of total loss of vision in right eye. Cataract consult was ordered.

October 23, 2002 Plaintiff was escorted to Private physician in Carson City (name is lost medical records) Physician recommended cataract surgery stating "it's the worst cataract I've seen in a while".

On September 17 and September 23, 2003 Utilization Review Panel refused cataract surgery

October 2003 Grievance process was started Copies of all levels of Grievances are available

Defendants conduct is extreme and outrageous because they are in a special relationship toward Plaintiff and behaved with medical Indifference

COUNT I

The following civil rights has been violated: Violation of  
the Eighth Amendment and 42 USC  
§ 1983 and Fourteenth Amendment

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

The actions of Defendants from October 2001 through June 17, 2010 as set forth violated Plaintiff's constitutional protection against cruel and unusual punishment. The described actions and omissions, engaged under color of state law by Dr. Scott, Dr. Snyder, and Dr. Barnister individually collectively, egregiously as above set out with willful indifference to deliberate disregard for statutory civil rights of Plaintiff deprived him of rights, privileges and immunities guaranteed by the eighth amendment to the United States and 42 USC § 1983 for which defendants are individually liable. Based on information and belief the official policy at NDOC is to remove catarsis in one eye only. Sight in one eye is what a prisoner receives. Based on information and belief this policy results from NDOC's

(cont in 4A)

Continued  
Supporting Facts (continued)

Lack of Funds. I now have total loss of vision in right eye. I bump into metal bunk and other protruding metal door jams. I also bump into other inmates and people from time to time. I have had heated arguments with other prisoners. Almost resulting in fights. My left eye tires when reading or watching tv. My eye is blinded by the light.

COUNT II

The following civil rights has been violated: Violation of Constitutional Rights (Injuctive and Declaratory Relief)

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff is entitled to medical treatment upon his conviction and confinement within NDODC. Defendants Dr Barnistr. M.D. and Howard Skolnik, Director NDODC individually and collectively egregiously failed promptly to provide plaintiff with such medical relief / treatment

Defendants breached their "Special Relationship" by not following their own physicians and consultants recommendations. The NDODC ordered consultant ophthalmologist recommended cataract surgery on 09/23/02. Plaintiff has total loss of vision, pain and suffering and possible permanent injury

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### COUNT III

The following civil rights has been violated: \_\_\_\_\_

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**Supporting Facts:** [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

#### **D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF**

- 1) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action?    Yes X No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

outline).

- a) Defendants: n/a
- b) Name of court and docket number: \_\_\_\_\_
- c) Disposition (for example, was the case dismissed , appealed or is it still pending?):  
\_\_\_\_\_
- d) Issues raised: \_\_\_\_\_  
n/a  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**

Yes  No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: n/a.
- b) Name of court and case number: n/a.
- c) The case was dismissed because it was found to be (check one): n/a frivolous  
       malicious or        failed to state a claim upon which relief could be granted.
- d) Issues raised: n/a  
\_\_\_\_\_
- e) Approximate date it was filed: n/a
- f) Approximate date of disposition: n/a

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: n/a.
- b) Name of court and case number: n/a

- c) The case was dismissed because it was found to be (check one): n/a frivolous  
n/a malicious or n/a failed to state a claim upon which relief could be granted.
- d) Issues raised: n/a
- e) Approximate date it was filed: n/a
- f) Approximate date of disposition: n/a

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: Not applicable
- b) Name of court and case number: n/a
- c) The case was dismissed because it was found to be (check one): n/a frivolous  
n/a malicious or n/a failed to state a claim upon which relief could be granted.
- d) Issues raised: n/a
- e) Approximate date it was filed: n/a
- f) Approximate date of disposition: n/a

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? X Yes        No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) n/a disciplinary hearing; (2) n/a state or federal court decision; (3) n/a state or federal law or regulation; (4)        parole board decision; or (5) n/a other \_\_\_\_\_.

If your answer is "Yes", provide the following information. Grievance Number 20062893914  
Date and institution where grievance was filed 02/22/10 UNCC and  
(2) 1746 10104103 at Nevada State Prison

Response to grievance: Catarack surgery is elective / cosmetic  
not considered for repair by Utilization  
Review<sup>(2)</sup> you are being treated according NDOC policy

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**E. REQUEST FOR RELIEF**

I believe that I am entitled to the following relief:

1. Injection ordering Plaintiff to be immediately examined by qualified ophthalmologist to ascertain a candidate for cataract surgery. That said surgery be ordered 2. Delarative judgement that policies, practices, and acts complained of herein are illegal and unconstitutional
- 3 Compensatory damages be determined at trial.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I **DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

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(Name of Person who prepared or helped prepare this complaint if not Plaintiff)

John O'Connell  
(Signature of Plaintiff)

October 19, 2010  
(Date)

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(Additional space if needed; identify what is being continued)  

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